Decision for dispute CAC-UDRP-101675

Case number	CAC-UDRP-101675
Time of filing	2017-10-17 15:51:11
Domain names	steiffnews.com,

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Margarete Steiff GmbH

Complainant representative

Organization	SKW Schwarz

Respondent

Name	Milton F. Shaw

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of the following trademarks: European Union trademark STEIFF, with registration number 000007443 and a registration date of 3 February 1998, and an International Trademark Registration for STEIFF, with No. 947107, registration date 13 September 2007.

FACTUAL BACKGROUND

According to the information provided Complainant is a producer of teddy bears and other plush toys. The business of Complainant was founded in 1880.

The disputed domain name <steiffnews.com> was registered on 13 July 2002. The disputed domain name <steiffvalues.com> was registered on 21 September 2012.

The trademark registrations of Complainant have been issued prior to the registration of the disputed domain names.

According to Complainant the disputed domain names are confusingly similar to Complainant’s trademarks since they contain the word STEIFF. The component ‘news.com’ and ‘values.com’ can be neglected as they are merely descriptive

terms.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain names. Respondent has neither been authorized by Complainant to register the disputed domain names, nor has Respondent acquired a legitimate right to use the STEIFF trademarks by any preceding or current business activity.
The website uploaded under the disputed domain name <steiffnews.com> is a random collection of links that lead to random internet sites. Complainant submits that it is obvious that these links are computer-generated as the only reason for their display lies in the keyword “Steiff” even if the content on those sites has nothing to do with Complainant (e.g. the following piece of information: “Scoring touchdowns for the Vikings were Michael Bachtle, Jake Weisert and Michael Steiff”). The commercial links displayed on the right hand side lead to a number of sites that feature adult or maybe even illegal content (especially links to lists showing “Sex Offenders”), to copyright-infringing downloading sites, and to other websites that are automatically generated.

Complainant submits that the website uploaded under the disputed domain name <steiffvalues.com> contains an excessive amount of pay-per-click-links. The commercial links displayed all over the website lead to a number of sites that feature adult content, to copyright-infringing downloading sites, and to other websites that are automatically generated. Complainant asserts that the content on these sites tarnishes Complainant’s good name. Respondent undoubtedly seeks to make financial gains from the links. The display of such content does not constitute a legitimate use. Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. Complainant has never licensed or otherwise authorized Respondent to use the trademark of Complainant.

According to Complainant the disputed domain names are registered and are being used in bad faith. By using the disputed domain names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s websites or location or of a product or service on Respondent’s websites or location. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with Complainant, UDRP paragraph 4(b) provides that this scenario constitutes evidence of a respondent’s bad faith. Respondent seeks to attract the consumers’ attention to its websites using the famous and most distinctive trademark and company name of STEIFF. The trademark and company name are unfairly exploited for Respondent’s commercial interest. Furthermore, the danger of confusion is raised by the display of the company logo (top left) and the characteristic turquoise colored top and bottom of the website which has been taken from the website <steiff.com>. By choosing this style Respondent created the impression of an official Steiff-site to attract attention. The content on this site is highly inappropriate and tarnishes Complainant’s good name. This must have been obvious to Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Complainant has established that it is the owner of several trademark registrations for STEIFF. The disputed domain names, <steiffnews.com> and <steiffvalues.com>, incorporate the entirety of the STEIFF trademark as its distinctive element. Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates a complainant's trademark in its entirety. The addition of the descriptive terms "news" and "value" and the generic Top-Level Domain ("gTLD") ".com" is insufficient to avoid a finding of confusing similarity.

In the opinion of the Panel, Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks or to register the disputed domain names incorporating its trademarks. Respondent is not making a legitimate noncommercial or fair use of the disputed domain names with intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of Complainant.

The Panel accepts the undisputed submission of Complainant that the disputed domain names resolve to automatically generated pay-per-click links leading to websites that feature adult, to copyright-infringing downloading sites, and to other websites that are automatically generated. The Panel does not consider such use a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names. In addition, the websites under the disputed domain names do not accurately and prominently disclose the relationship between Respondent and Complainant as the holder of the well-known and long existing STEIFF trademark, in particular as there has never been any business relationship between Complainant and Respondent. Respondent is also not commonly known by the disputed domain names nor has it acquired any trademark or service mark rights.

The Panel finds that the disputed domain names have been registered and are being used in bad faith. Noting the well-known status of the STEIFF marks and the overall circumstances of this case, the Panel finds it more likely than not that Respondent knew or should have known of Complainant's STEIFF marks.

The Panel notes that the disputed domain names resolve to websites with automatically generated pay-per-click links leading to websites that feature adult, to copyright-infringing downloading sites, and to other websites that are automatically generated. The fact that such links may be generated automatically does not prevent a finding of bad faith (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 3.5). The Panel further notes that the disputed domain names incorporate Complainant's well-known STEIFF trademark in its entirety, which indicates, in the circumstances of this case, that Respondent registered and used the disputed domain names with the intention to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its websites or location or of a service on its websites or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy. This finding is not made any different because of a substantial delay in filing the Complaint. Remedies under the UDRP are injunctive and the purpose is to halt ongoing and avoid future abuse and confusion as to the source of communications, goods or services.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **STEIFFNEWS.COM**: Transferred
2. **STEIFFVALUES.COM**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2017-11-16

Publish the Decision